APPEAL NO. 93031

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On October 15, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) determining that appellant, claimant herein, reached maximum medical improvement (MMI) on July 27, 1992 with no impairment. Claimant appealed saying that his treating doctor will not let him work and has not assigned an impairment rating while the designated doctor only saw him for a short period of time. Respondent, carrier herein, replies that the appeal was not timely filed and that there is sufficient evidence to affirm the hearing officer's decision.

DECISION

Finding that the record contains sufficient evidence to support the hearing officer's decision, it is affirmed.

I

Claimant's request for review has two date stamps of the Texas Workers' Compensation Commission on it. One is "Jan 13 1993" and the other is "Dec 16 1992." The decision was distributed on December 4, 1992 so the appeal was timely.

II

Claimant is a truck driver who reported his injury after unloading some equipment on (date of injury). Temporary income benefits were paid until the designated doctor found MMI on July 27, 1992. The only issue at this hearing was whether claimant had reached MMI and, if so, with what impairment rating.

Claimant's first treating doctor was (Dr. Z). Claimant believed that he was not being helped by this doctor and after October 1991 quit seeing him. Claimant's treating doctor at the time of this hearing was Dr. S. Although claimant offered 24 exhibits, including narratives from Dr. Z; Dr. B, the doctor selected by the carrier; and (Dr. A), the designated doctor, he only provided two notes from Dr. S. One note, dated October 14, 1992, called for work hardening and another, also dated October 14, 1992, said claimant should not work for four weeks.

Claimant testified that Dr. S has told him that he is still hurt, that he has a herniated disc at L4-5, that he may need surgery, and that he is not at MMI. Claimant acknowledged that Dr. S did not say what kind of surgery he may need and did not say surgery would improve his condition. Claimant was critical of the amount of time both Dr. B and Dr. A spent with him. He described certain tests that each did, could not remember if certain other tests were done, and said that neither doctor had him bend to the side. In answer to a question by the hearing officer, claimant said he did not know whether either Dr. B or Dr. A had a copy of claimant's EMG, but he added that the carrier told him to bring his x-rays (which he did) and it would send the other records to each doctor. Claimant testified that

in addition to the EMG, he had a CAT scan and an MRI. Claimant believes that his treating doctor knows his condition better than Dr. B or Dr. A, and although Dr. S has not found MMI, Dr. S indicates that claimant would have a 7% impairment.

Medical documents claimant offered characterize the CAT scan as indicating a small bulge at L4-5. The MRI report, dated August 15, 1992, states, "mild diffuse bulging of L4-5 disc without focal disc protrusion." Dr. B's narrative of his examination, which found MMI and no impairment on January 23, 1992, noted that the MRI showed some bulging at L2-3, L3-4, and L4-5, all within normal limits. Dr. B, a neurosurgeon, provided a very thorough report documenting extensive testing performed of claimant.

Dr. A, selected by the Commission as the designated doctor, found MMI on July 27, 1992 with no impairment. His narrative was not as thorough as that of Dr. B, but it did recite range of motion and other testing along with review of the MRI and other records. The TWCC Form 69, with the attached narrative, is sufficiently completed to meet the requirements for certification of MMI and no impairment rating.

The hearing officer is the sole judge of the weight to assign to evidence. *See* Article 8308-6.34(e) of the 1989 Act. In this instance, the hearing officer in Finding of Fact No. 6 indicated her awareness that Articles 8308-4.25(b) and 4.26(g) require that the designated doctor be given presumptive weight unless the "great weight of the other medical evidence is to the contrary." Finding of Fact No. 6 provided:

> (Dr. A), the doctor designated by the Commission, on July 27, 1992, determined that the Claimant had reached maximum medical improvement; the opinion of (Dr. A) is entitled to presumptive weight unless overcome by the great weight of medical evidence to the contrary.

While the hearing officer then made no finding that Dr. A's opinion was not overcome by other medical evidence, we may infer such a finding by her conclusions of law that said claimant reached MMI on July 27, 1992 with no impairment. These findings and conclusions are sufficiently supported by the medical evidence. Dr. B's opinion agrees with Dr. A as to impairment and found MMI several months earlier. Records provided from claimant's first treating doctor, Dr. Z, are not contrary to the opinions of Dr. A or Dr. B. While claimant relates that his current treating doctor, Dr. S, is of a different opinion, he provides hardly any medical records and no statements from Dr. S to show the basis for any disagreement.

Claimant asserts that he received no explanation as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b) (Rule 130.6(b)) and that the opinion of his treating doctor should constitute the great weight of medical evidence as opposed to the designated doctor who only saw him a short time.

Rule 130.6(b) says only that an unrepresented claimant should be told that an ombudsman is available to explain the agreement that claimant and carrier enter into if they choose a designated doctor. When, as here, the Commission chooses the designated doctor, there is no agreement for the claimant to join in; if the Commission then failed to tell claimant that a person is available to explain an agreement, not used, that omission is not controlling in this case.

The legislature decided, through the provisions of Articles 8308-4.25 and 4.26, that a designated doctor's opinion would be given a presumption over other medical evidence, including that of the treating doctor. These statutes do allow a different outcome in the rare instance when the great weight of other medical evidence is contrary to that of the designated doctor. The legislature, in composing Articles 8308-4.25 and 4.26 as they did, did not choose to give a presumption to a treating doctor even though, normally, that doctor would be more familiar with the case. This Appeals Panel, along with the hearing officer, is charged with interpreting and applying the law as it is written.

The hearing officer, in determining that the great weight of other medical evidence is not contrary to the designated doctor's opinion as to MMI and impairment rating, is sufficiently supported by the evidence. The decision that MMI was reached on July 27, 1992 with no impairment is not against the great weight and preponderance of the evidence. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge